UNITED STATES SUPREME COURT

Docket No.- 80-6818

JUN 8 1981

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ALLEN RODZIEWICZ, # 64141
New Jersey State Prison;

Petitioner-Appellant;

-V-

GARY J. HILTON, Superintendent,
Trenton State Prison, and

JOHN J. DEGNAN, Attorney General of the
State of New Jersey;

Respondents-Appellees.

Civil Action-28 USC 2254

On petition for certiorari to the United States Court Of Appeals For The Third Circuit.

Sat Below:

Hunter and Sloviter, Circuit Judges.

APPENDIX ON BEHALF OF PETITIONER-APPELLANT

ALLEN RODZIEWICZ # 64141
Drawer "N"
Trenton State Prison
Trenton, N.J. 08625
Petitioner-Appellant, Pro Se

PRESENTLY CONFINED

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SUPREME COURT OF NEW JERSEY
M-610 SEPTEMBER TERM 1979

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ALLEN RODZIEWICZ,

Defendant-Movant

ORDER

FILED

Clerk

This matter having been duly presented to the Court, it is ORDERED that the motion for bail pending appeal is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 25th day of March, 1980.

A TRUE COPY
Stephen Richmond
CLERK

Clerk

(Pa 1)

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALLEN RODZIEWICZ, #64141 Trenton State Prison Trenton, New Jersey	:	
Petitioner,	:	Civil Action No. 80-2389.
v.	:	
GARY J. HILTON, Superintendent of Trenton State Prison, and the Attorney General of the State of New Jersey, JOHN J. DEGNAN,	:	OPINION
Respondents.	:	

FILED

FEB 26 1981

at 3:30 P M

ANGELO W. LOCASCIO
Clerk

DEBEVOISE, District Judge.

Appearances: Allen Rodziewicz, #64141
New Jersey State Prison
Drawer "N"
Trenton, New Jersey 08625
(Petitioner, pro se)

Katherine A. Smith, Esquire
Deputy Attorney General
State of New Jersey
Division of Criminal Justice
13 Roszel Road
Princeton, New Jersey 08540
(Attorney for Respondents)

Petitioner, Allen Rodziewicz, is serving a sentence in Trenton State Prison of life imprisonment for murder and a consecutive term of nine to ten years by reason of the fact that the offense was committed while armed. N.J.S.A. 2A:113-2, 2A:151-5. His petition for a writ of habeas corpus, brought pursuant to 28 U.S.C. § 2241, et seq., asserts that he has been deprived of due process of law under the Sixth and Fourteenth Amendments because the State courts have refused to release him on bail pending appeal of his conviction.

The matter was referred to the Honorable John W. Devine, United States Magistrate, pursuant to General Rule 40A, for his preliminary review and report and recommendation. Judge Devine filed his report and recommendation on December 9, 1980. The report noted that N.J. Court Rule 2:9-4 provides that a defendant "shall be admitted to bail . . . pending the prosecution of an appeal . . . only if it appears that the case involves a substantial question which should be determined by the appellate court and that the safety of any person or of the community will not be seriously threatened if the defendant remains at large. . . . A trial judge denying bail shall state briefly his reasons therefor." (Emphasis added.) The Magistrate's report further noted that on March 21, 1980, the trial court, when denying bail, stated that there were no substantial questions to be considered on appeal and that, therefore, it was unnecessary to consider whether petitioner was a threat to the community. Without elucidating any reasons, the New Jersey Supreme Court denied petitioner's motion for bail by an order dated March 25, 1980.

Judge Devine concluded as a matter of law that the United States Constitution provides no absolute right to bail following conviction in a state court, and that on the basis of the record in this matter there is no merit in petitioner's contention that he is being denied bail in violation of his Sixth and Fourteenth Amendment rights. He recommended that the petition be dismissed without an evidentiary hearing.

Petitioner filed objections to the Magistrate's report and recommendation. He stated that he did not contest the denial of bail by the trial court which gave its reasons for its action. Rather, petitioner contests the action of the New Jersey Supreme Court, which denied bail without giving any reason, and he attacks the constitutionality of Rule 2:9-4 because, although it requires the trial court to give reasons for denial of post-conviction bail, it does not impose a similar requirement upon the appellate courts.

Judge Devine filed a supplemental report and recommendation on February 4, 1981. Judge Devine concluded that petitioner's rights were not violated by the Supreme Court's post-conviction denial of bail without a further hearing and without the further articulation of a reason for the denial.

I have conducted an independent review of the record, in compliance with Townsend v. Sain, 372 U.S. 293 (1963), and 28 U.S.C. § 636(b)(1)(B), and the petition for the writ, the pleadings, the record of the applicable portions of the State court proceedings, the briefs, the report and recommendation and supplemental report and recommendation of the United States Magistrate and the objections thereto. I conclude that I should adopt Judge Devine's report and follow his recommendations.

(Ps 4)

There is no absolute federal constitutional right to bail after a state conviction, e.g., see Roberson v. State of Connecticut, 501 F.2d 305, 308 (2d Cir. 1974). If a state does provide bail after conviction of a crime, as New Jersey has done in limited circumstances, an arbitrary denial of bail violates the Fourteenth Amendment, United States ex rel. Walker v. Twomey, 484 F.2d 874 (7th Cir. 1973).

It has been held that federal courts will not require state courts to articulate reasons for denial of release on bail pending appeal where a petitioner has not borne the burden of overcoming the presumption of regularity of the state court's actions by showing that there was no rational basis in the record for such actions, e.g., Jenkins v. Harvey, 634 F.2d 130 (4th Cir. 1980); United States ex rel. Smith v. Twomey, 486 F.2d 736 (7th Cir. 1973), cert. den., 416 U.S. 994 (1974), reh. den., 417 U.S. 959 (1974); United States ex rel. Walker v. Twomey, supra; contra, e.g., Abbott v. Laurie, 427 F. Supp. 976 (D.R.I. 1976) (District Court granted petition for writ of habeas corpus but stayed enforcement, requesting the Rhode Island Supreme Court to consider either granting bail or issuing a statement of findings of fact that would enable a reviewing court to determine whether the denial was arbitrary.)

In the present case, New Jersey Court Rule 2:9-4, providing for bail pending appeal, requires that a trial judge denying bail state his reasons. The Rule does not require that appellate courts denying bail in such circumstances state their reasons. The Rule was complied with in this case. The trial court stated its reasons; the New Jersey Supreme Court did not.

(Pa 5)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALLEN RODZIEWICZ, #64141 Trenton State Prison Trenton, New Jersey	:	Civil Action No. 80-2389.
Petitioner,	:	Dickinson R. Debevoise, USDJ
v.	:	
GARY J. HILTON, Superintendent of Trenton State Prison, and the Attorney General of the State of New Jersey, JOHN J. DEGNAN,	:	ORDER
Respondents.	:	

FILED

FEB 26 1981

at 3:30 P M

ANGELO W. LOCASCIO
Clerk

For the reasons set forth in this Court's opinion filed February 26th, 1981,

IT IS, on this Twenty-sixth day of February, 1981,

ORDERED that the petition for a writ of habeas corpus of Allen Rodziewicz filed in this Court on July 30, 1980, be and the same is hereby denied without an evidentiary hearing. This Court certifies that there is no probable cause for appeal from this order. No costs.

Dickinson R. Debevoise
United States District Judge

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C. A. Misc. Rec. No. 81-8022

Allen RODZIEWICZ, #64141,

Appellant

vs.

GARY J. HILTON, Superintendent of Trenton State Prison and The Attorney General of the State of New Jersey, JOHN J. DEGNAN

(D.N.J. Civ. No. 80-2389)

Present: HUNTER and SLOVITER, Circuit Judges

Submitted by the Clerk on appellant's behalf is a request for a certificate of probable cause pursuant to Rule 22(b), Federal Rules of Appellate Procedure

in the above-captioned case listed for April 20, 1981 or as the Court decides.

Respectfully,

Clerk

SM:HK:lls
enc.

The foregoing Motion is/are

for certificate of probable cause is denied

By the Court,

Judge

Dated: May 1, 1981

(Pa 7)

Due Process Clause of The Fourteenth Amendment

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and residents of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law.

28 U.S.C. 2243

"A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the applications that the applicant or person is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for a hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of the court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."

28 U.S.C. 2245

"The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true."

28 U.S.C. 2254

"(a) The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus incustody pursuant to the judgement of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of the section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgement of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indica, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit-

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue

F.R.Civ.P. 56

"A party seeking to recover upon a claim, counter-claim, or cross-claim or to obtain a declaratory judgement may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgement by the adverse party, move with or without supporting affidavits for a summary judgement in his favor upon all or any part thereof."

F.R.Civ.P. 81(a)(2)

"These rules are applicable to proceedings for admission to citizenship, habeas corpus, and quo warrants, to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions. The writ of habeas corpus or order to show cause, shall be directed to the person having custody of the person detained. It shall be returned within 3 days unless for good cause shown additional time is allowed which in cases brought under 28 U.S.C. 2254 shall not exceed 40 days, and in all other cases shall not exceed 20 days."

N.J.R. 2:9-4

"Except as otherwise provided by R. 29-5 (a), the defendant in criminal actions shall be admitted to bail on motion and notice to the county prosecutor pending the prosecution of an appeal or proceedings for certification only if it appears that the case involves a substantial question which should be determined by the appellate court and that the safety of any person or the community will not be seriously threatened if the defendant remains at large. Pending appeal to the Appellate Division, bail may be allowed by the trial judge, or if denied by him by the Appellate Division, or if denied by the Appellate Division, by the Supreme Court. Following disposition in the Appellate Division and pending proceedings in the Supreme Court, bail may be allowed by the Appellate Division, or if denied by it, by the Supreme Court. A copy of an order entered by an appellate court granting bail shall be fowarded by the clerk of the appellate court to the sentencing court and the clerk of the trial court. A trial judge denying bail shall state his reasons therefor; In no case shall a defendant who has been sentenced to death be admitted to bail."